

REMARKS/ARGUMENTS

Claims 16, 18-20, 25, 34, 35 and 39-450 are pending in the application.

Applicants gratefully acknowledge the Examiner's comments concerning the allowability of claim 18.

I. Rejection of Claims 16, 19-20, 25, 34, 35, and 40-42 Under 35 U.S.C. § 102(e)

Claims 16, 19, 20, 25, 34, 35, and 40-42 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Johnson *et al.* (US 6,582,706) as evidenced by Hermand *et al.* (US 2004/0081662). The Examiner states that Johnson *et al.* discloses a polypeptide that shares 95% sequence identity with an amino acid sequence of SEQ ID NO. 2 (amino acids 1-1039) and would elicit a protective anti-streptococcal immune response. The Examiner concludes, therefore, that the cited reference anticipates the claimed invention. This rejection is respectfully traversed as follows.

Applicants enclose herewith the declaration of Denis Martin, one of the co-inventors of the claimed invention, stating that Applicants were in possession of the claimed invention prior to the priority date of the cited prior art reference, *i.e.*, December 21, 1998. Accordingly, the cited reference is not prior art to the present claims under 35 U.S.C. § 102(e), and the rejection is respectfully traversed.

II. Rejection of Claims 43-46 Under 37 C.F.R § 1.75 (Double Patenting)

It is respectfully submitted that the amendments to claims 43-46 render this ground of rejection moot.

It is respectfully submitted that the present application, as amended above, is in condition for allowance, an early notification thereof being earnestly solicited.

09/471,255

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in black ink, appearing to read "J. Toffenetti", enclosed within a large, loopy oval shape.

Judith L. Toffenetti
Registration No. 39,048

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 JLT:ajb
Facsimile: 202.756.8087
Date: December 15, 2005

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